



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1998

Mr. Terrence S. Welch
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main Street, Suite 4400
Dallas, Texas 75201-7388

OR98-2589

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#119316.

The City of McKinney (the "city"), which you represent, received a request for documents relating to the operation of the McKinney Municipal Airport (the "airport") from January 1, 1990 to July 30, 1998.¹ You indicate that the city does not object to "the release of items generally considered open to the public, such as ordinances passed by the City, City Council minutes and the City's annual budget documentation." However, you contend that all other documents responsive to the request are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed a representative sample of the documents at issue.²

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which the state is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at

¹You note that the request is vague, and that the city would require "greater specificity" if obligated to respond to the request. When a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow or clarify his request. Gov't Code § 552.222; Open Records Decision Nos. 563 (1990), 561 (1990).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

issue is related to that litigation. *Heard v Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, the governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.*

Having considered the totality of the circumstances presented in this case, we find that the city reasonably anticipates litigation relating to its expansion of the airport. However, we do not believe that all of the submitted documents are related to the anticipated litigation. We have marked the documents that do not appear to relate to the issue of airport expansion. The city may not withhold these documents under section 552.103(a). The remaining documents appear to be related to the anticipated litigation, and, therefore, may be withheld from disclosure pursuant to section 552.103(a). *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.).

In reaching this conclusion, however, we assume that the opposing party in the anticipated litigation has not previously had access to the information at issue; absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 119316

Enclosures: Marked documents

cc: Mr. Roger D. Sanders
Sanders, O'Hanlon & Motley, P.L.L.C.
111 South Travis Street
Sherman, Texas 75090
(w/o enclosures)